IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5381 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RUDRA PRATAP SAMARBAHADUR

Versus

NIRANJAN MILLS LTD.

Appearance:

1. Special Civil Application No. 5381 of 2003

MR DIPAK R DAVE for Petitioner No. 1

MRS KETTY A MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/07/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has challenged the order of the Industrial Court, Surat dated 19th August, 2002 passed in Appeal [I.C.] No. 28 of 2000

whereby, the Industrial Court while allowing the appeal quashed and set aside the order of the Labour Court dated 25th August, 2000, passed in T. Application No.376/91.

2.0. The short facts of the case are that the petitioner was serving as jobber with the respondent. On 6th May, 1991, the respondent issued showcause notice alleging that the petitioner had not followed the instructions of his supervisor and had also beaten his supervisor. In view of that, the petitioner was suspended from the service, during the pendency of the inquiry.

2.1. The petitioner replied to the said showcause notice on 18th May, 1991 and pointed out the fact that the supervisor has misbehaved with him and, therefore, he has reacted to the situation. Since the suspension continued the petitioner made a request vide letter dated 26th July, 1971 praying that he shall be paid full backwages during the period he has not been allowed to join on duty and had been placed under suspension pending inquiry and has also prayed that the he may be taken in service on his original post by revoking the suspension, pending inquiry order. The petitioner approached the Labour Court by filing T. Application. The Labour Court by judgment and award dated 25th August, 2000 partly allowed the application of the petitioner and directed the respondent to pay salary from 6th May, 1991 till 19th December, 1995.

2.2. It may be noted here that in view of the purshis filed at Exh. 17, the petitioner was already reinstated in service as reflected from judgment dated 25th August, 2000. Therefore, the only question which was open before the Labour Court was regarding salary between 6th May, 1991 and 19th December, 1995. The said order of Labour Court was challenged by filing appeal before the Industrial Court, being Appeal [I.C.] No. 28 of 2000. The Industrial Court, while allowing the appeal quashed and set aside the order of the Labour Court dated 25th August, 2000.

3.0. I have heard learned advocates of both the sides. Looking to the allegations made in the petition and considering the evidence on record that the misconduct of the petitioner is proved, the respondent ought not to have granted him 100% backwages from 6th May, 1991 to 19th December, 1995. Since the misconduct of the petitioner is proved, it was also necessary to impose some penalty. In my opinion, ends of justice would be met if the petitioner is paid 25% of the salary instead

of 75% for the period from 6th May, 1991 to 19th December, 1995.

3.1. In the result, the petition is partly allowed. The order of Industrial Court dated 19th August, 2000 passed in Appeal [I.C.] No. 28 of 2000 is modified. It is directed that the respondent will pay 25% of the salary to the petitioner for the period between 6th May, 1991 to 19th December, 1995. Rule is made absolute with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/